MICHIGAN
LAW REVIEW

VOL. XIV. JUNE, 1916 No. 8

GAME PROTECTION AND THE CONSTITUTION.

THE Agricultural Department Appropriation Act of March 4, 1913, contains these provisions:

> "All wild geese, wild swans, brant, wild ducks, snipe, plover, woodcock, rail, wild pigeons, and all other migratory game and insectivorous birds which in their northern and southern migrations pass through or do not remain permanently the entire year within the borders of any state or territory, shall hereafter be deemed to be within the custody and protection of the government of the United States, and shall not be destroyed or taken contrary to regulations hereinafter provided therefor.
>
> "The Department of Agriculture is hereby authorized and directed to adopt suitable regulations to give effect to the previous paragraph by prescribing and fixing closed seasons, having due regard to the zones of temperature, breeding habits, and times and line of migratory flight, thereby enabling the department to select and designate suitable districts for different portions of the country, and it shall be unlawful to shoot or by any device kill or seize and capture migratory birds within the protection of this law during said closed seasons, and any person who shall violate any of the provisions or regulations of this law for the protection of migratory birds shall be guilty of a misdemeanor and shall be fined not more than $100 or imprisoned not more than ninety days, or both, in the discretion of the court."[1]

Such are the provisions, in essential part, of the so-called WEEKS-MCLEAN MIGRATORY BIRD ACT. In pursuance of the authority thus vested in it the Department of Agriculture promptly drew up "suit-

[1] 37 United States Statutes at Large, p. 847.

able regulations" which were approved by the President. At once, however, the validity of the act itself was drawn into question on the constitutional ground, and within the last two years two State Supreme Courts and two lower Federal Courts have pronounced against it in opinions more or less elaborate, while one lower Federal Court has sustained it without opinion.[2] Quite recently the Supreme Court of the United States, to which the question of constitutionality had been appealed, has asked for a re-argument of the matter, presumably on account of the division of opinion among its members on a matter recognized to be one of gravity. Altogether, the question as to whether Congress had the power to pass the Act of March 4, 1913, seems an immediately pertinent one.

As to the vast importance of birds in protecting grain, fruit, and trees from insect enemies, whose annual toll upon the wealth of the people of the United States even now amounts into the hundreds of millions of dollars, there is no dispute. Nor would any but the most brutish fail to lament the loss of beauty which the disappearance of many of the diminishing species of our feathered neighbors would mean to life. Again, it is not denied that the states are generally incompetent, either by joint action or singly, to protect bird life in the United States. But do these facts touch the constitutional question? In one of the cases referred to the argument was made in behalf of the act that "Where the state is clearly incompetent to save itself, the National Government has the right to aid",[3] but the court answered with the words of Mr. Justice BREWER in *Kansas v. Colorado,* as follows:

> "But the proposition that there are legislative powers affecting the Nation as a whole which belong to, although not expressed in the grant of powers, is in direct conflict with the doctrine that this is a government of enumerated powers. That this is such a government clearly appears from the Constitution, * * * for otherwise there would be an instrument granting certain specified things made operative to grant other and distinct things. This natural construction of the original body of the Constitution is made absolutely certain by the Tenth Amendment. This amendment, which was seemingly adopted with prescience of just such contention

[2] United States v. Shauver, 214 Fed. 154 (May 25-July 9, 1914); United States v. McCullagh, 221 Fed. 288 (March 20, 1915); State v. Sawyer, 113 Me. 458, 94 Atl. 886 (July 21, 1915); State v. McCullagh, 96 Kans. 786. 153 Pac. 557 (Dec. 11, 1915). The decision rendered without opinion was in the United States District Court for South Dakota, 17 West Pub. Co.'s Docket, 1476.

[3] United States v. Shauver, 214 Fed. 154, 157.

> as the present, disclosed the wide-spread fear that the National Government might, under the pressure of a supposed general welfare, attempt to exercise powers which have not been granted. With equal determination the framers contended that no such assumption should ever find justification in the organic act, and that if in the future further powers seemed necessary they should be granted by the people in the manner they had provided for amending that act. * * * Its principal purpose was not the distribution of power between the United States and the States, but a reservation to the people of all powers not granted."[4]

That this passage embraces an established canon of constitutional construction, no student of Constitutional Law would care to deny; yet the canon in question has certain important limitations. And whether it is relevant to the present case may perhaps be doubted.

But before I come to this phase of the question, there are some other matters to be touched upon; and first I wish to call attention to two features of the decisions above referred to, which in the light of the history of our Constitutional Law are of the greatest significance.

The first of these features is furnished by the fact that no one of the four courts pronouncing the act of Congress void made anything of the delegation of powers authorized by that act to the Department of Agriculture. This is undoubtedly to be explained by the United States Supreme Court's decision in *United States* v. *Grimaud*,[5] in which a similarly broad delegation of power to the same department was sustained, partly on the basis of an equivocal distinction between the making of administrative rules and legislation proper and partly on the basis of the more intelligible principle that in order to exercise this power beneficially Congress must often delegate it. True, the penalties for the violation of authorized administrative regulations must be set by Congress itself;[6] but this condition being complied with, the court will to-day almost invariably sustain such regulations where they have "clear legislative basis."[7]

And even more significant is the second feature I refer to, namely, the recognition explicitly or implicitly accorded in all these opinions that if Congress had the power to pass the Act of March 4, 1913, such act would be supreme over any conflicting state statutes or con-

[4] Kansas v. Colorado, 206 U. S. 46, 89-90.
[5] 220 U. S. 506. See also Buttfield v. Stranahan, 192 U. S. 470.
[6] United States v. Eaton, 144 U. S. 677.
[7] United States v. George, 228 U. S. 14, 22.

stitutional provisions. Thus, in all these cases, the doctrine is asserted, on the authority of *Geer* v. *Connecticut*,[8] that the legislative power of the state extends to the protection of the wild game within the state, both because of "the common ownership of" such game "and the trust for the benefit of its people which the state exercises in relation thereto," and because of "the duty of the state to preserve for its people a valuable food supply." Yet at the same time, the enquiry was extended to the question whether the National Government possesses power capable of reaching the same subject-matter in the manner of the act under review. And in *United States* v. McCullagh, the court, (Justice POLLOCK), quotes the following passage from Mr. Justice MATTHEW'S opinion in *Smith* v. *Alabama*:

> "The grant of power to Congress in the Constitution to regulate commerce with foreign nations and among the several States, it is conceded, is paramount over all legislative powers, which, in consequence of not having been granted to Congress, are reserved to the States. It follows that any legislation of a State, although in pursuance of an acknowledged power reserved to it, which conflicts with the actual exercise of the power of Congress over the subject of commerce, must give way before the supremacy of the national authority."[9]

And this passage the learned judge follows up with the following words from Mr. Justice VAN DEVANTER'S more recent opinion in the *Second Employer's Liability Cases*:

> "True, prior to the present act the laws of the several States were regarded as determinative of the liability of employers engaged in interstate commerce for injuries received by their employes while engaged in such commerce. But that was because Congress, although empowered to regulate that subject, had not acted thereon, and because the subject is one which falls within the police powers of the States in the absence of action by Congress."[10]

But, of course, the supremacy of acts of Congress regulating interstate commerce over conflicting state laws arises from Art. VI., Par. 2, of the Constitution, which secures a like supremacy to all

[8] 161 U. S. 519.
[9] 124 U. S. 465, 473.
[10] 223 U. S. 1, 54-5.

exertions of national power over state power exercised in conflict therewith.

In other words, these decisions, though not entirely devoid of contradiction at this point, do on the whole attest that the judiciary of this country is gradually pulling itself loose from the bog into which the so long dominant doctrine of States' Rights years ago landed it,—in other words, is getting rid of the solecism that state power, to all exertions of which in the recognized forms of law-making national power is by the Constitution itself pronounced invariably paramount, may yet in some strange way or other comprise a separate limitation on national power.[11] More than one hundred and twenty years ago James MADISON himself pointed out that "interference with the powers of the states was no constitutional criterion of the powers of Congress"; that "if the power was not given Congress it could not exercise it", but that if it was given "they might exercise it, although it should interfere with the laws and even the constitutions of the states."[12] The same principle underlay and determined MARSHALL'S great decisions in *McCulloch* v. *Maryland*,[13] *Cohens* v. *Virginia*,[14] and *Gibbons* v. *Ogden*.[15] It has been reiterated by the present Court frequently within the last two or three years.

Had, then, Congress any constitutional power to enact the measure under discussion? That is the question before us, and the only question. Two clauses of the Constitution have been suggested as justifying this legislation, the Commerce Clause, and Art. IV, Sec. 3, Par. 2, of the Constitution, whereby Congress is authorized to "make all needful rules and regulations respecting the territory and other property belonging to the United States." Let us consider these in order.

Speaking to the argument based in behalf of the act on the Commerce Clause one of the opinions above cited says:

> "The natural flight of wild fowl from one point to another does not constitute 'commerce,' unless that word be expanded beyond any significance hitherto given it. Whatever other element may be spared from a definition of the term it has not heretofore applied to processes or occurrences not directed or affected by human intelligence."[16]

---

[11] See in general my National Supremacy (Holt and Co., 1913) on this question.

[12] 2 Annals of Congress, Col. 1891.

[13] 4 Wheat. 316.

[14] 6 Wheat. 264.

[15] 9 Wheat. 1.

[16] State v. McCullagh, 96 Kans. 786, 788-9, 153 Pac. 557, 558. To same effect is State v. Sawyer, 113 Me. 458, 462, 94 Atl. 886, 888.

This is no doubt true, yet it does not necessarily conclude the question, even if the statute under discussion be regarded as a measure designed to safeguard an act of interstate commerce, such act being the flight of birds. There have before this been cases in which previously unaccepted definitions of the term "commerce" have confronted the court and have been accepted by it. Take, for instance, the doctrine that the transportation of persons from one state to another is "commerce among the states." In *Gibbons* v. *Ogden,*[17] notwithstanding the definition of "commerce," there laid down as "intercourse," the court hesitated to rule decisively that the carriage of persons fell within the concept; yet to-day this is established law. Consider, again, the much more recent case of *Hoke* v. *United States,*[18] in which the court holds, by necessary inference at least, not merely the carriage of persons, but the passage of persons from one state to another, to fall within the power granted Congress. Consider, again, the extension of the same term in the familiar *Pensacola Telegraph Co.* case[19] to the transmission of intelligence. Perhaps we may conclude that the term "commerce" has not yet received its ultimate and finished definition. Perhaps we may claim reasonable ground for the expectation that "commerce," which has frequently been said to connote "the movement of persons and things," may refer to the literal movement of the latter as well as of the former, in addition to their carriage.

But a second difficulty in the way of an appeal to the Commerce Clause is found by some of the courts above mentioned in the decision in *Geer* v. *Connecticut.* In this case it was held that the state as common proprietor of the game within its boundaries might, in the exercise of the prerogatives of proprietor, require those whom it allowed to reduce such game to their possession to withhold the same from interstate commerce; and from this it was concluded by Justice POLLOCK that the state may "absolutely forbid" the game within its borders from "coming under the protection and control of the Commerce Clause of the National Constitution."[20]

Now, whether this conclusion is warranted by anything that was actually said in *Geer* v. *Connecticut,* I should hardly venture to say, inasmuch as no act of Congress was there involved and the only question before the court concerned the scope of the state's power in the *absence* of Congressional action. What I will venture to say is that,

---

[17] 9 Wheat. 1.

[18] 227 U. S. 308. See also Covington Bridge Co. v. Kentucky, 154 U. S. 204.

[19] 96 U. S. 1.

[20] United States v. McCullagh, 221 Fed. 288, 292.

whether so warranted or not, the conclusion is erroneous, and for the reason indicated by the words quoted by Justice POLLOCK himself from *Smith* v. *Alabama,* and again for the reason stated by MADISON, that "the powers of the States are no constitutional criterion of the power of Congress." Besides, the wild game of the state is not the only thing within the state with reference to which the state government stands in a relation of quasi-proprietorship; it has a similar relation to the atmosphere, the forests, and the water within its boundaries, and has a standing in court to protect these irrespective of the assent or dissent of the private owners immediately concerned.[21] Yet it is amply established that the state's control of the waters within its boundaries must always yield in the last analysis to the superior power of Congress in control of commerce and navigation among the states, a determination which again illustrates the general principle.[22]

Suppose, therefore, we concede the proprietorship of the state in its wild game to the fullest extent, what then is the legal character of the migration of game from one state to another, considered in their aspect of successive proprietors of such game? Obviously, it is that of transfer of property across state lines from one legal person to another, *that is,* "Commerce." True, the transfer is not by contract between the legal persons involved, but rather by the operation of a kind of legal prescription; yet it is none the less a legal transfer, and it is "among states." Nor is it a merely casual occurrence, as for instance, where a dog might elect to change masters, but it is a regularly recurrent, seasonal, and predictable process, which, even though not susceptible of "regulation" in many senses of the word, certainly ought to be capable of being protected by the government of the larger community which is benefitted by it.

Suppose, however, we dismiss the word "commerce" from consideration, contenting ourselves with the earliest definition ever fastened upon it by judicial decision, to wit, as including "navigation;"[23] and then let us turn our attention to the other dimension of Congress' power in this field, the phrase "to regulate."

In *United States* v. *The Rio Grande Irrigation Co.,* the question at issue was the validity of the Act of Congress of September 19, 1890, prohibiting the creation of obstructions to navigation in the

[21] Kansas v. Colorado, 185 U. S. 125; Georgia v. Tennessee Copper Co., 206 U. S. 230; Hudson Water Co. v. McCarter, 209 U. S. 349. See also the arguments of counsel in the last case.

[22] See U. S. v. Rio Grande Irrigation Co., 174 U. S. 690, quoted from infra.

[23] The reference is to Gibbons v. Ogden.

navigable waters in the United States. Sustaining the act, the court said:

> "The unquestioned rule of the common law was that every riparian owner was entitled to the continual natural flow of the stream * * * It is also true that as to every stream within its dominion the state may change this common law rule. * * * Yet two limitations must be recognized; first, that in the absence of specific authorization from Congress, a state cannot by its legislation destroy the right of the United States as the owner of lands bordering on a stream to the continued flow of its waters, * * *; second, that it is limited by the superior power of the General Government to secure the uninterrupted navigability of all navigable streams within the limits of the United States. In other words, the jurisdiction of the General Government over interstate commerce and its natural highways vests in that government the right to take all needed measures to preserve the navigability of the navigable water courses of the country, against even state action. It is true there have been frequent decisions recognizing the power of the state, in the absence of Congressional legislation, to assume control of even navigable waters within its limits to the extent of creating dams, bridges, (etc.) * * * The power of the state to thus legislate for the interests of its own citizens is conceded, and until in some way Congress asserts its superior power and the necessity of preserving the general interests of the people of all the states, it is assumed that state action * * * is not subject to challenge. * * * Evidently Congress, perceiving that the time had come when the growing interests of commerce required that the navigable waters of the United States should be subjected to the direct control of the National Government, * * * enacted the statute in question."[24]

Here are two propositions; first, that Congress' power to regulate commerce includes the power to maintain and preserve the navigability of the navigable streams of the United States; second, that this power overrides conflicting state authority over such streams. The basis of the latter proposition is already sufficiently obvious, and it demands, I trust, no further elaboration. But a recent application

[24] 174 U. S. 690, 702-3, 708.

of the doctrine stated in the first proposition is most relevant to our question. I refer to the Act of March 1, 1911, creating a National Forest Reservation Commission with authority to establish the so-called White Mountain and Appalachian Reserve.[25] Said Senator NEWLANDS, of Nevada, sponsor for the measure in the Senate: "This bill establishes and applies a constitutional principle of vast importance, which is that the regulation of the flow of rivers by the protection of the water-sheds from denudation and erosion and the preservation of forests as sources of water supply is a proper function of the National Government under its power to maintain the navigability of streams."[26] That Senator NEWLANDS' assumption that a close relation exists between the preservation of the forests and the maintenance of water-supply is supported by the weight of scientific authority will not, I suppose, be questioned. Yet it may very well be questioned whether there is any more intimate relation in fact between the preservation of the navigability of streams and that of the forests at their head-waters than there is between the preservation of forests and that of the bird life of the country.

In other words, and to expand the argument at this point, I submit the following propositions: first, that the power of Congress to regulate commerce includes the power to preserve the navigability of the navigable streams of the country; second, that to this end Congress may pass all laws necessary and proper; third, that a law is "necessary and proper" in the constitutional sense when a real relation exists between it and the constitutional end to be achieved; fourth, that such a relation is a matter of fact; fifth, that it is a fact, supported by scientific observation, that a real relation exists between the preservation of forests at the headwaters of streams and that of the streams themselves; sixth, that it is a fact, supported by scientific observation, that a real relation exists between the preservation of the bird life of the country and that of the forests; seventh, that, therefore, it is a fact that a real relation exists between the Act of March 4, 1913, and the maintenance of the navigability of the navigable streams of the country.

And thus much for the Commerce Clause as a basis for the MIGRATORY BIRD ACT. We now turn to Art. IV, Sec. 3, par. 2: "The Congress shall have power to * * * make all needful rules and regulations respecting the territory or other property of the United

[25] 37 U. S. Statutes at Large, 961-3.
[26] 46 Cong. Record, pt. 3, p. 2589.

States."[26a] In this connection the language of the opening section of the statute is interesting:

> "All wild geese, wild swans, * * * and all other migratory game and insectivorous birds which in their northern and southern migrations pass through or do not remain permanently the entire year within the borders of any state or territory *shall hereafter be deemed to be within the custody and protection of the government of the United States.*"

The act may then be regarded as an effort by the National Government to assert formal ownership over the migratory birds of the country. Is there any constitutional warrant for the authority thus asserted?

It is, of course, to-day settled doctrine that the National Government may exercise the power of eminent domain whenever it is necessary for it to do so in the exercise of any of its enumerated powers;[27] but that principle is not available in the present instance, since the only "enumerated" power of Congress to which this assumed exercise of the power of eminent domain—so to consider it for the moment—is related as a means is the power to regulate commerce, and that phase of the question we have already discussed.

We come then, to the question whether the government of the United States is one of merely enumerated powers. As we have seen, the court has sometimes said that such is the case; and so far as it was the intention of the court to deny the validity of that canon of constitutional construction whereby powers are claimed for the National Government solely because of actual inadequacy of the state governments, or so far as it was its intention to assert the principle that the National Government is one of *granted* powers, there can be no question of the soundness of its position. Taken literally, however, the proposition that the government of the United States is one of *enumerated powers only* runs counter to the facts.

Thus, in the first place, the government of the United States has its "necessary and proper" powers, which, so far from being enumerated, are of practically unlimited range, provided only that they be "conducive to" some end within the power of Congress to achieve.[28] Again, the government has what have been called "resultant" powers,

---

[26a] Curiously enough, two of the judges in the cases under review, speak of this paragraph of the Constitution as the "General Welfare" Clause. The General Welfare Clause is to be found in Art. 1, sec. 8, par. 1.

[27] Kohl v. U. S., 91 U. S. 367, is the leading case.

[28] See McCulloch v. Maryland, 14 Wheat. 416; also Legal Tender Cases, 12 Wall. 457, 539.

powers which ensue from its possession of certain other powers, considered singly or in groups, as for example its power to issue legal tender notes which, as was shown in *Juilliard* v. *Greenman*,[29] flows from a number of the enumerated powers considered *ensemble;* or its power to carry the mails which ensues from its power "to establish post-offices and post-roads". Finally, it has certain powers from the fact, pointed out by Mr. Justice BRADLEY in *Knox* v. *Lee*,[30] that "It is a National Government, and the *only* government in this country that has the character of nationality."

That is to say, the United States is a political community and as such has community interests which the National Government, in virtue of its quality as such, may constitutionally assert and protect Thus, it is by virtue of its national agency that the National Government may acquire territory.[31] Again, it is by virtue of its national agency that it may exclude aliens from the United States.[32] Again, it is by virtue of its national agency that it may declare and uphold what has been graphically designated "a National Peace".[33] Why, then, the question emerges, may it not, in virtue of the same agency, recognize and assert a national ownership over the wild game of the country?

Let us in this connection turn again to *Geer* v. *Connecticut*. Here we find it distinctly recognized that wild game is a thing in which community ownership may exist. However, it will be objected that this was at the common law, and that, while there is a common law of the states, there is no common law of the United States. To this assertion there are several pertinent answers, the first being that in a number of fields, for example that of commercial law and that of International Law, there *is* a common law of the United States which the national Courts have repeatedly recognized and enforced.[34] But more to the point at this instant is the query, *Why* the common law rule just referred to? And the answer to this question is, that the rule under discussion recognizes and protects a community interest. The real source, in other words, of the community ownership in

[29] 110 U. S. 421.

[30] 12 Wall. 457.

[31] American Insurance Co. v. Canter, 1 Pet. 511; Church of Jesus Christ v. United States, 136 U. S. 1.

[32] Chae Chan Ping v. United States, 130 U. S. 581; Fong Yue Ting v. United States, 149 U. S. 698.

[33] In re Neagle, 135 U. S. 1.

[34] See for instance Swift v. Tyson, 16 Pet. 1, and The Paquete Habana, 175 U. S. 677. I am not insisting upon the identity of this law with the old English common law, but merely upon the fact that there is at points a community law of the United States that does not come from Congress.

ferae naturae is the public interest involved.[35] But now, is it not obvious that there is a national interest in migratory birds of precisely the same sort as that which confers upon the state a qualified ownership of the game within its boundaries? And if this is so, is not this interest of the same character as that of the state? And does not the Constitution, which is always to be interpreted in the light of the common law,[36] recognize this interest and create a government capable of protecting it?

Moreover, the question is approachable from another angle. Thus it will be observed that the Act of March 4, 1913, draws a line between "migratory" birds and those which "remain permanently" within the state. Our attention is consequently directed to that phase of the common law rule with reference to community ownership in *ferae naturae* which relates especially to migratory things. Actually, in origin this phase of the rule would seem to be a rule for the determination of the relative rights of *adjoining nations*[37] in the control of such things. It is thus a rule of International Law, of which, therefore, the Act of Congress may be considered declaratory. A parallel case would be where a great island should arise from the sea partly within the marine belt of the United States. The right of the National Government not only to exclude all foreign intruders therefrom but to assert complete domestic jurisdiction over it would probably not be challenged. In short, when attention is given to the prerogatives of the National Government, in its quality as the organ of a member of The Family of Nations and as the guardian of the community interests of the United States, it would seem that the quasi-ownership that has hitherto been attributed to the states in migratory game has subsisted by the mere allowance of the National Government, and that the true significance of the Act of March 4, 1913, is merely that this allowance has now been withdrawn.

However, there is one more phase of the general question demanding consideration in connection with Art. IV, Sec. 3, par. 4. Under this paragraph of the Constitution Congress is the custodian of the public lands of the United States, among which are millions of acres of valuable forest lands. Now no one, I suppose, would deny that Congress, in order to protect the timber on these lands, may enact fitting penalties against its theft, provide for the pursuit

[35] See Geer v. Connecticut, passim.

[36] See Mr. Justice Gray in U. S. v. Wong Kim Ark, 169 U. S. 649, and cases there cited.

[37] See McCready v. Virginia, 94 U. S. 391, and Manchester v. Massachusetts, 139 U. S. 240.

of the offenders throughout the United States, and visit penalties upon their accomplices wherever they may be found within the national jurisdiction. In fact, in one way or other Congress has done just these things; nor has its right to do so ever been impeached so far as I am aware.

But now, *why* may Congress so act? Clearly, it is not by virtue of its powers under Art. IV, which are powers of merely local application. The answer to the question is to be found in the Necessary and Proper Clause of Art. I, Sec. 8, which enables Congress in its capacity as national legislature to make all laws necessary and proper for carrying into execution any of the powers of the National Government. By virtue of this clause, as MARSHALL pointed out for a parallel case in *Cohens* v. *Virginia*,[38] Congress may give legislation intended to discharge its local functions nation-wide operation if it be necessary and proper for it to do so, and the only question that can arise with reference to legislation designed so to operate is whether it is incidental to such local functions. Such being the case, however, let the question be posed whether the MIGRATORY BIRD ACT, with its nation-wide operation, is not a necessary and proper measure for the protection of the forest reserves of the United States? Can there really be any dispute on that heading?

In short, the Act of March 4, 1913, far from being the unwarrantable usurpation of power that the decisions which we have passed in review would make it out to be, is constitutionally justifiable on a number of grounds. But it is most advantageously and most correctly viewed as part and parcel of the great movement for the conservation of national resources, for the conservation of the navigable streams of the country, of its forests, of its wild life; for the elimination of the natural enemies of community prosperity. Putting its powers at the disposal of this great movement Congress has enacted several notable pieces of legislation, of which the MIGRATORY BIRD ACT is one. Looked at either as a deliberate assertion by the national legislature of the nation's proprietorship of the migratory game of the country or as an act "necessary and proper" in a rational chain of causation for the preservation of the navigability of the streams of the country and its timber reserves, this act is valid.

EDWARD S. CORWIN.

Princeton, N. J., May 9, 1916.

[38] 6 Wheat 264, 423-30.